

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
COLUMBIA INDUSTRIAL PARK, )  
Appellant, )  
v. )  
SOUTHWEST AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

PCHB No. 77-92

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

PER W. A. GISSBERG:

A formal hearing on the appeal of a \$250.00 civil penalty for allegedly violating respondent's open burning regulations was held before Board members W. A. Gissberg, Chairman, and Dave J. Mooney in Centralia, Washington on September 27, 1977.

Appellant appeared by and through its General Manager, Paul A. Nelson; respondent by its attorney, James D. Ladley.

Having heard the testimony and examined the exhibits, the Board makes the following

1 FINDINGS OF FACT

2 I

3 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
4 a certified copy of its Regulation I containing respondent's regulations  
5 and amendments thereto.

6 II

7 Appellant, from time to time, sells scrap metal from its location  
8 in Vancouver, Washington to Taylor Scrap Iron and Metal Work (herein-  
9 after Taylor). It is sometimes necessary for Taylor to cut the metal  
10 with an acetylene torch on the grounds of appellant under the ultimate  
11 right of supervision and control of appellant. On June 13, 1977, while  
12 Taylor was so engaged in cutting up a small elevator platform, the  
13 torch accidentally ignited a part of the plywood thereon which started  
14 a fire for which no permit had been obtained.

15 III

16 Respondent's inspector observed the fire and Taylor "throwing a  
17 piece of wood on the fire." Taylor did not deny that he did so.

18 IV

19 Section 4.01 of respondent's Regulation 1 makes it unlawful to  
20 "ignite, cause to be ignited, permit to be ignited, or suffer, allow or  
21 maintain any open fire" unless a permit has been obtained therefore.

22 V

23 In order to put out the fire it was necessary to fill garbage cans  
24 with water, place the cans onto a pickup truck and carry them to the  
25 scene, using buckets to douse the fire.

26 FINAL FINDINGS OF FACT,  
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VI

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

Although the fire may have been accidentally ignited, Taylor's action in throwing wood thereon amounted to allowing or maintaining an open fire in violation of respondent's regulations.

II

Appellant is responsible for Taylor's action because it retained the ultimate right of the control and supervision of Taylor's work. While it may well have been quicker to have put out the fire in the manor described in Finding of Fact V as contrasted with hooking up a hose and bringing it within reach, prudence dictates that water or fire extinguishers be immediately available at the scene of any acetylene torch work.

III

Appellant violated respondent's open fire regulations and did not show the \$250.00 civil penalty to have been unreasonable under the circumstances.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

ORDER

The notice of violation and civil penalty are affirmed.

DATED this 30<sup>th</sup> day of September 1977.

POLLUTION CONTROL HEARINGS BOARD

*W. A. Gissberg*

W. A. GISSBERG, Chairman

*Dave J. Mooney*

DAVE J. MOONEY, Member

FINAL FINDINGS OF FACT,  
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